

THE SOLICITORS (SCOTLAND) ACT 1980  
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

F I N D I N G S

in Complaint

by

THE COUNCIL OF THE LAW  
SOCIETY of SCOTLAND

against

THOMAS PATRICK MELLON, 31  
Main Street, West Calder, West  
Lothian.

1. A Complaint dated 20<sup>h</sup> June 2003 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Thomas Patrick Mellon, Solicitor, 31 Main Street, West Calder, West Lothian (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order under Section 53 and Part II of Schedule IV of the Solicitors (Scotland) Act 1980 in the matter as it thinks right.
  
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged by the Respondent.

3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 8<sup>th</sup> October 2003 and notice thereof was duly sent to the Respondent via his solicitor.
  
4. The hearing took place on 8<sup>th</sup> October 2003. The Complainers were represented by their Fiscal Walter Muir, Solicitor, Ayr. The Respondent was not present and not represented. Answers were lodged on the morning of the Tribunal by the Respondent's solicitor admitting the facts and averments contained in the Complaint. No evidence was led.
  
5. The Tribunal found the following facts admitted or proved:
  - (1) He was born on 9<sup>th</sup> March 1969. He was admitted as a Solicitor on 26<sup>th</sup> September 1995 and enrolled on 28<sup>th</sup> September 1995. The Respondent is not presently in practise as a solicitor.

**Mr and Mrs A**

- (2) On 29<sup>th</sup> November 2002 the Complainers made a Determination under Section 42A(1) of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the firm of Airlie Mellon & Co to Mr and Mrs A. The Complainers then further determined in terms of Section 42A(2)(d) of the said Act that the said firm should pay to Mrs and Mrs A the sum of £300.00 by way of compensation.

The Respondent was the sole principal of the said firm at the material times when said inadequate professional service was provided to Mr and Mrs A. On 12<sup>th</sup> December 2002 the Complainers wrote to the Respondent advising him, *inter alia*, that the Complainers had made a finding of inadequate professional service in three separate complaints and the Respondent was directed to pay the sum of £300.00 by way of compensation to Mr and Mrs A. In this letter the Complainers advised the Respondent that he required to provide them with a written explanation of the steps which he had taken to comply with the direction to pay compensation to Mr and Mrs A within a period of 21 days. The Respondent did not provide the Complainers with this written explanation. By Notice in terms of Section 42(B)(1) of the said Act dated 26<sup>th</sup> February 2003 the Complainers again wrote to the Respondent calling upon him to provide confirmation to the Complainers of the steps which he had taken to implement the aforementioned determination in respect of payment of compensation to Mr and Mrs A and that within a period of 21 days. The Respondent did not appeal the aforementioned determination in respect of compensation.

The Respondent has failed to implement the said Determination and Direction.

5. Having considered the foregoing circumstances, Tribunal find that the Respondent has failed to comply with the Determination and Direction given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 within the period specified namely within 21 days of 26<sup>th</sup> February 2003; and the Tribunal resolved to make an order in terms of Section 53C(2) of the Solicitors (Scotland) Act 1980 and issued an Interlocutor in the following terms:-

Edinburgh 8<sup>th</sup> October 2003. The Tribunal having considered the Complaint dated 20<sup>th</sup> June 2003 at the instance of the Council of the Law Society of Scotland against Thomas Patrick Mellon, Solicitor, 31 Main Street, West Calder, West Lothian; Find that the Respondent failed to comply with the Determination and Direction given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 within the period specified, Direct that an Order be issued under Section 53C(2) of the said Act an; Find the Respondent liable in expenses of the Complainers and of the Tribunal as the same may be taxed by the Auditor of the Court of Session on an agent and client indemnity basis in terms of Chapter Six of the Law Society's Table of Fees for general business; and Direct that publicity will be given to this decision and that this publicity will include the name of the Respondent.

(Signed) ALISTAIR M COCKBURN

Vice Chairman

11. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Vice Chairman

## NOTE

The Council of the Law Society of Scotland had made a Determination under Section 42A of the Solicitors (Scotland) Act 1980 which was not appealed by the Respondent. A Complaint was then made under the provisions of Section 53C of the said Act which states that

- (1) Where a solicitor fails to comply with a direction given by the Council under Section 42A (including, as the case may be, such a direction as confirmed or varied on appeal by the Tribunal or the Court) within the period specified in the notice relating to that direction given to the solicitor under Section 42B(1) or such longer period as the Council may allow, the Council shall make a Complaint to the Tribunal and may appoint a solicitor to represent them in connection with the complaint.
- (2) If after inquiry into a complaint made under subsection (1) the Tribunal is satisfied that the solicitor has failed to comply with the direction the Tribunal may order that the direction, or such part of it as the Tribunal thinks fit, shall be enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

On the morning of the Tribunal the Respondent lodged Answers admitting the facts and averments in the Complaint. The Tribunal found that the Respondent had not complied with the Determination and Direction of the Law Society. Having regard to the circumstances and the precise terms of Section 53(2) the Tribunal is of the opinion that an order should be made. Further the Tribunal find that the Respondent has had ample time to comply with the Determination and Direction and it is therefore appropriate for the Respondent to bear the whole of the expenses of these proceedings. As the disposal of this Complaint constitutes a decision for the purposes of the Fourth Schedule to the Solicitors (Scotland) Act 1980 the Tribunal is required in terms of paragraph 14 of the Schedule to give publicity to this decision.

Vice Chairman